IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 387 of 1999

in

SPECIAL CIVIL APPLICATION No 4453 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ISHWARBHAI MAVJIBHAI CHAUDHARI

Versus

REGIONAL EXECUTIVE DIRECTOR.

Appearance:

1. LETTERS PATENT APPEAL No. 387 of 1999

MRS SANGEETA N PAHWA for Appellant No.

MR CHETAN PANDYA for MR SV RAJU for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 25/11/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

On the note filed by Mrs.Sangeeta Pahwa, learned counsel for the appellant, both the learned counsel for the parties Mrs.Pahwa and Mr.Chetan Pandya for Mr.S.V.Raju for respondent agreed for final hearing of this appeal and accordingly this appeal is heard and disposed of today.

Learned counsel Mrs.Pahwa for the appellant-original petitioner vehemently submitted that when there is a sick note of counsel for the petitioner, then ordinarily the court does not decide the matter on merits. In spite of it, in a given case learned Single Judge noting that there is a sick note of learned counsel for the petitioner proceeded to decide the matter on merits against the petitioner. Mrs.Pahwa submitted that if a reasonable opportunity of being heard was given to the petitioner to present his case through his counsel, then the learned Single Judge might not have taken the view which she had taken. On facts of this case, Mr.Pandya was hardly in a position to support the judgment and order passed by the learned Single Judge.

Having regard to the facts and circumstances of the case, we are of the considered opinion that the learned Single Judge should have and could have waited when there was a sick note of the learned counsel for the appellant-petitioner.

In view of the above discussion, this appeal is allowed and the judgment and order dated 26.2.1999 passed by the learned Single Judge dismissing the Special Civil Application No.4453/97 is hereby quashed and set aside and the matter is remitted to the learned Single Judge to decide the same on merits.

At this stage, Mr.Pandya insisted to make suitable observations that this court while allowing this appeal has not gone into the merits of the case. Our order is more than clear. We have not touched the merits. In fact, learned counsel, Mrs.Pahwa has not addressed us on merits, therefore, there is no question of making any observations on the merits of the case.

With these observations, this appeal is allowed.
No order as to costs.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)
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